APPENDIX.

CHAPTER 232, LAWS OF 1924.

An Act providing for the service of process in the civil suits upon nonresident chauffeurs, operators, or nonresident owners whose motor vehicles are operated within the State of New Jersey, without being licensed under the provisions of the Laws of the State of New Jersey, providing for the registration and licensing of drivers and operators and of motor vehicles, requiring the execution by them of a power of attorney to the Secretary of State of the State of New Jersey to accept civil process for them under certain conditions.

BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY:

1. From and after the passage of this act any chauffeur, operator or owner of any motor vehicle, not licensed under the laws of the State of New Jersey, providing for the registration and licensing of motor vehicles, who shall accept the privilege extended to nonresident chauffeurs, operators and owners by law of driving such a motor vehicle or of having the same driven or operated in the State of New Jersey, without a New Jersey registration or license, shall by such acceptance and the operation of such automobile within the State of New Jersey, make and constitute the Secretary of State of the State of New Jersey, his, her or their agent for the acceptance of process in any civil suit or proceeding by any resident of the State of New Jersey against such chauffeur, operator or the owner of such motor vehicle, arising out of or by reason of any accident or col-

lision occurring within the State in which a motor vehicle operated by such chauffeur, or operator, or such motor vehicle is involved.

2. Whenever any collision or accident shall occur within the State of New Jersey and the driver of any motor vehicle involved therein shall be a nonresident and shall not be licensed under the laws of the State of New Jersey to operate a motor vehicle, or, a motor vehicle involved in any such collision or accident shall not be registered or licensed under the laws of the State of New Jersey, the magistrate before whom the nonresident owner of such motor vehicle or such operator shall be brought shall require such nonresident, as a condition to his release on bail or otherwise, to execute a written power of attorney to the Secretary of State of the State of New Jersey appointing such officer the lawful agent of such nonresident for the acceptance of service of process in any civil suit instituted or to be instituted by any resident of the State of New Jersey against such nonresident for or on account of any claim, demand or cause of action arising out of such collision or accident.

Such power of attorney shall be upon a form prepared and furnished to such recorder or other committing magistrate by the Secretary of State, and shall, after execution, be filed with the Secretary of State; and the requirements of this section shall be in addition to and not in limitation of any other provision concerning the giving of bail or other security.

3. From and after the passage of this act it shall and may be lawful to serve civil process upon a nonresident owner of a motor vehicle in any action or proceeding arising out of a collision or accident in which any automobile of such nonresident, which automobile was not registered or licensed in the State of New Jersey under the provi-

sions of the laws providing for such registration and license, upon any chauffeur, or operator of that or any other motor vehicle of such nonresident owner while such motor vehicle is by such chauffeur or operator being operated within the State of New Jersey. Service of process in any such action arising in such manner may be also lawfully served hereafter upon any nonresident owner by serving such process upon any person over the age of fourteen years who has the custody of such automobile, whether held by him as security or driven; provided, however, that a copy of such civil process also be posted in a conspicuous place upon such automobile.

4. This act shall be construed to extend the right of service of process upon nonresidents and shall not be construed as limiting any provision for the service of process now or hereafter existing.

5. This act shall take effect immediately.

Approved March 12, 1924.

FILED
JAN 11 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 142, October Term, 1927.

James W. Wuchter,
Plaintiff-in-Error,
v.
Michael Pizzutti,
Defendant-in-Error.

In Error to the Court of Errors and Appeals of New Jersey.

Memorandum of Information Requested by Members of the Court at the Time of the Argument.

In accordance with the request of members of the Court made during the argument of the above entitled cause, I beg to submit the following authorities.

(1) Re opening of judgment.

I cannot find any statutory provision in New Jersey for opening a judgment after a lapse of time. We have no more than the common law powers of a Court to control its own judgments.

(2) Re forwarding of process to foreign corporations served under the corporation and insurance statutes.

Section 99 of the New Jersey Corporation Act (2 Comp. Stat., p. 1658), provides that if the agent of a foreign

corporation dies, removes from the State or becomes disqualified, etc., the corporation shall forthwith file in the office of the Secretary of State a written appointment of another agent, and in case of omission to do so, then the Secretary of State shall revoke the certificate of authority, and process against such corporation in actions upon any liability incurred within this State before the designation of another agent may, after such revocation, be served upon the Secretary of State; at the time of such service the plaintiff shall pay to the Secretary of State two dollars, "and the Secretary of State shall forthwith mail a copy of such process to such corporation at its general office or to the address of some officer thereof, if known to him."

The New Jersey Insurance Company Act provides in Section 61 (Comp. Stat., Vol. 2, p. 2857), that when any original process against a foreign corporation is served upon the commissioner of banking and insurance as attorney for an insurance company, "he shall forthwith notify the company of such service by letter directed to its secretary, or in the case of a company of a foreign country to its resident manager, if any, in the United States; and shall within two days after such service forward in the same manner a copy of the process served on him to such secretary or manager, or to such other person as may have been previously designated by the company by written notice filed in the department of banking and insurance; said commissioner shall keep a record of all such process, which shall show the day and hour of service."

(3) Re right to review a judgment on writ of error for want of jurisdiction when no appearance was entered before the judgment.

The New Jersey cases holding that a case may be brought on writ of error to the Court of Last Resort, although there was no appearance until after final judgment, are as follows:

Barrett Mfg. Co. v. *Kitchell*, 84 N. J. L. 326;
Stehr v. *Ollbermann*, 49 N. J. L. 633;
Jaudel v. *Schoelzke*, 95 N. J. L. 171.

The basis of these decisions is that legal error appearing in the record of a judgment is reviewable on error, even though the lower court might and should, on application, have rectified the error.

In *Stehr* v. *Ollbermann*, the question was jurisdictional, and the Court of Errors and Appeals dealt with it on error.

The New Jersey Practice Act of 1912 (P. L. 1912, p. 377, Section 25) provides:

> "Bills of exceptions and writs of error in civil cases are abolished. In lieu of a writ of error, an appeal may be taken in any case in which the appellant would, heretofore, have been entitled to that writ."

Respectfully submitted,

JAMES D. CARPENTER, JR.,
Of Counsel with Plaintiff-in-Error.

Office Supreme Court, U. S.
NOV 28 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 142.

JAMES W. WUCHTER,

Plaintiff-in-Error,

—against—

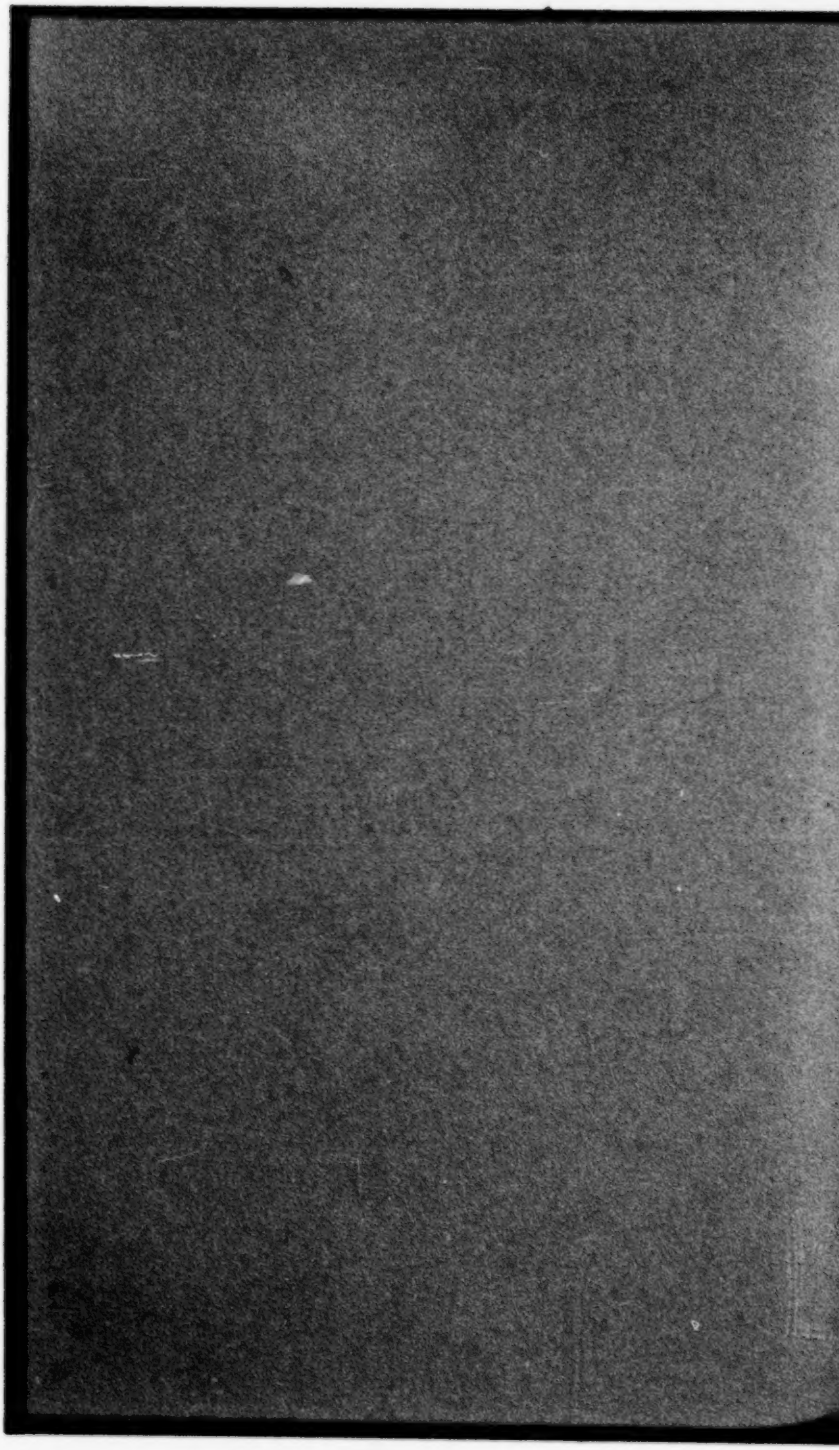
MICHAEL PIZZUTTI,

Defendant-in-Error.

NOTICE OF MOTION FOR DIMINUTION OF THE RECORD, AFFIDAVITS AND BRIEF IN SUPPORT THEREOF.

JACOB R. MANTEL,
Attorney for Defendant-in-Error.

Arthur W. Green, Law Printer, 69-61 Lafayette Street, Newark, N. J.



INDEX

	Page
Notice of Motion for Diminution of the Record.....	1
Affidavits	2
Brief in Support of Motion	4

IN THE

Supreme Court of the United States

No. 142—October Term, 1927.

James W. Wuchter,

Plaintiff-in-Error,

—against—

Michael Pizzutti,

Defendant-in-Error.

NOTICE OF MOTION FOR DIMINUTION OF THE RECORD.

To Charles Elmore Crockley, Clerk, and James D. Carpenter, Jr., Esq., attorney for plaintiff-in-error.

Sirs:

Take Notice of a motion before the Supreme Court of the United States, Washington, D. C., at the time argument is heard on the writ of error in the above cause, for an order to include in the record of this cause, affidavits hereunto attached and made part hereof.

Dated: November 21, 1927.

Respectfully yours,

JACOB R. MANTEL,
Attorney for Defendant-in-Error.

IN THE

Supreme Court of the United States

Affidavit of the Chief Clerk in the Office of the Secretary of State of the State of New Jersey.

STATE OF NEW JERSEY, } ss.
COUNTY OF UNION.

ERNEST R. KERR, of full age, being duly sworn according to law, on his oath deposes and says:

I am Chief Clerk in the office of the Secretary of State of the State of New Jersey. On the 19th day of November, 1925, the summons and complaint issued out of the New Jersey Supreme Court, in the above-entitled matter, addressed to Mr. James W. Wuchter, at #103 South Madison street, Allentown, Pennsylvania, was mailed to the defendant, with postage prepaid thereon. That there has been no return to the summons nor has the same been returned to the office of the Secretary of State of the State of New Jersey, by the Post Office authorities.

ERNEST R. KERR.

Sworn and subscribed to before me this
19th day of November, A. D. 1927.

FRANK LANSU,
M. C. C. of N. J.

Affidavit of Jacob R. Mantel.

STATE OF NEW JERSEY,
COUNTY OF UNION. } *ss.*

JACOB R. MANTEL, of full age, being duly sworn according to law, on his oath deposes and says:

I am the attorney of record for the defendant-in-error herein. Before the institution of this suit in the New Jersey Supreme Court, the defendant-in-error herein handed to me the name and address of the plaintiff-in-error, which, as he informed me, he had obtained from the plaintiff-in-error. The name and address given to me was as follows:

James W. Wuchter, #103 South Madison street, Allentown, Pennsylvania.

JACOB R. MANTEL.

Sworn and subscribed to before me this
22nd day of November, A. D. 1927.

J. JEROME KAPLOW,
An Attorney at Law of N. J.

IN THE

Supreme Court of the United States

No. 142—October Term, 1927.

James W. Wuchter,
Plaintiff-in-Error,

—against—

Michael Pizzutti,
Defendant-in-Error.

BRIEF FOR DEFENDANT-IN-ERROR IN SUPPORT OF MOTION FOR DIMINUTION OF RECORD.

Defendant-in-error desires to have the affidavits hereinbefore set forth included in the record of this case. These affidavits were not put in the record or called for before this, because the plaintiff-in-error did not raise the point as set forth in Point I of his brief (brief of plaintiff-in-error, page 6). He did not raise this point in the statement of points to be relied upon (R. 24), and as this is the first time this point is raised, the real facts should be brought before the attention of this Court, to wit, that the process in this case was mailed by the Secretary of State of the State of New Jersey to the plaintiff-in-error giving him notice of the institution of the suit. The counsel for the plaintiff-in-error has informed me that he would agree to have stated to the Court, that the process was mailed to the plaintiff-in-error and received by him, but that he would not consent in writing to have the affidavits herein included in this record.

Defendant-in-error therefore moves that the affidavits herein of Jacob R. Mantel and Ernest R. Kerr be included as part of the record of this cause in this Court.

Respectfully submitted,

JACOB R. MANTEL,
Attorney for Defendant-in-Error.

FILED
NOV 29 1927
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 142.

JAMES W. WUCHTER,

Plaintiff-in-Error,

vs.

MICHAEL PIZZUTTI,

Defendant-in-Error.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF NEW JERSEY.

BRIEF FOR DEFENDANT-IN-ERROR.

JACOB R. MANTEL,
Counsel for Defendant-in-Error.

Arthur W. Cross, Law Printer, 32-34 Lafayette Street, Newark, N. J.